IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

OP.No. 7199 of 2000(F)

PETITIONER:

KERALA JUDICIAL OFFICERS' ASSOCIATION,
KERALA, REP.BY ITS SECRETARY B.G.HARINDRANATH.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

1. THE STATE OF KERALA, REP.BY ITS SECRETARY
TO GOVT., LABOUR & REHABILITATION DEPARTMENT,
GOVT.SECRETARIAT, TRIVANDRUM.

2. HIGH COURT OF KERALA, ERNAKULAM, REP.BY
ITS REGISTRAR.

3. C.N.SASIDHARAN, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, KOLLAM.

4. B.RANJITH KUMAR, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, PALAKKAD.

5. M.N.RADHAKRISHNA MENON PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, KOZHIKODE.

6. P.V.ABRAHAM, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, IDUKKI.

7. K.KANAKACHANDRAN, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, ALAPPUZHA.

8. THE KERALA STATE PUBLIC SERVICE COMMISSION,
TRIVANDRUM, REP.BY ITS SECRETARY.

9. K.JOHN MATHAI, ADVOCATE, ERNAKULAM,
PERMANENTLY RESIDING AT OLIPPARATH HOUSE,
MANEED P.O., PIRAVOM.

(ADDL.R5 IMPLEADED AS PER ORDER IN CMP NO.41361/2001 DTD.8.8.2007)

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
SRI.P.R.RAMACHANDRA MENON
SRI.M.V.JOSEPH
SRI.KRB.KAIMAL
SRI.T.G.MAHESH
GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.58261/2000 IN O.P.7199/2000

DISMISSED

8/8/2007 V.GIRI, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE LETTER NO.DO NO.29937/G3/99/LBR DTD.8.12.1999.

EXT.P2 PHOTO COPY OF MEMO NO.29937/G3/99/LBR DTD.18.12.2000 OF THE ADDITIONAL SECRETARY, GOVT. OF KERALA, LABOUR AND REHABILITATION (G) DEPT., THIRUVANANTHAPURAM.

RESPONDENT'S EXHIBITS:

EXT.R4A PHOTO COPY OF THE SELECT LIST.

EXT.R4B PHOTO COPY OF THE APPOINTMENT ORDER ISSUED BY THE IST RESPONDENT DTD.31.7.1993.

EXT.R4C PHOTO COPY OF THE ORDER DTD.7.11.1995.

EXT.R6(A) TRUE COPY OF THE GOVT.ORDER NO.GO (MS) NO.52/93/LBR&REH.DTD.23.7.1993.

TRUE COPY

P.A.TO JUDGE

V.GIRI,J.

O.P.NO. 7199 of 2000

Dated this the 8th day of August, 2007

JUDGMENT

The Kerala Judicial Officer's Association inter alia challenge the appointment of respondents 3 to 7 as Industrial Tribunals. They also seek a declaration that the post of Presiding Officers of Labour Courts and Industrial Tribunals are identical since it involves the same type of duties and responsibilities. A direction to the State of Kerala to treat the five posts of Presiding Officers of Industrial Tribunal as promotion posts for being filled up by duly qualified members of the Judicial service has also been sought for.

2.The petitioner contends that it is a registered association of judicial officers working in the State of Kerala. There are five Industrial Tribunals in the Kollam, Palakkad, Kozhikode, Idukki and Alappuzha districts. The submission is that as per the practice in vogue, existing District Judges are posted as Presiding Officers of the various Labour Courts in Kerala. However, District Judges are not appointed as Presiding Officers of the five Industrial Tribunals constituted under Section 7A of the Industrial Disputes Act. The petitioner also contends that the Presiding Officers of the Industrial Tribunals are appointed from among practising advocates by direct recruitment and respondents 3 to 7 have been recruited directly from the Bar. Contending that there is parity in the discharge of judicial function and service in an Industrial Tribunal and Labour Court, the

petitioner seeks a declaration that the post of Presiding Officers of Labour Courts and Industrial Tribunals are identical. Reference is made to Section 7 and 7A of the Industrial Disputes Act. It is stated that there is similarity in the qualification prescribed thereunder in relation to a Labour Court and an Industrial Tribunal, that the functions which are discharged by a Labour Court on one hand and an Industrial Tribunal on the other would be similar, if not identical, and consequently there is no reason why the method of appointment in so far as the Labour court is concerned should not be adopted in the case of an Industrial Tribunal as well.

3. Though as stated above, the petitioner Association had posed a challenge against the appointment of respondents 3 to 7 as Industrial Tribunals, in the writ petition, the said challenge was expressly given up by the learned counsel for the petitioner at the time when the writ petition was heard. It is, therefore, not necessary to consider the said aspect.

4.Learned counsel for the petitioner contends that Section 7 and 7A of the Industrial Disputes Act are similarly worded, that Presiding Officers of Labour Courts and Industrial Tribunals discharge judicial functions and service in a Labour Court and an Industrial Tribunal would come under the category of judicial service within the meaning of Article 234 of Constitution of India. On the premise, that District Judges were appointed as Presiding Officers of Labour court, there is no reason why the members of the judicial service who were otherwise qualified under the said section should not be

considered for appointment as Industrial Tribunals. His contention is that hitherto no member of the judicial service has been appointed as an Industrial Tribunal and that there is unjustifiable reluctance on the part of the Government in considering members of the judicial service for appointment to the post of an Industrial Tribunal.

5. Learned counsel for the petitioner relied on the decision of the Supreme Court reported in **State of Maharashtra v Labour Law Pratitioner's Association and others**(AIR 1998 SC 1233) to contend for the position that Presiding Officers of Industrial Tribunals and Labour Courts constitute judicial service and hence the recruitment of Labour Court Judges is required to be made in accordance with Article 234 of the Constitution of India. The contention seems to be that on a parity of reasoning, the same course ought to be adopted in the case of appointment to the post of Presiding Officers of the Industrial Tribunals as well and therefore only members of judicial service ought to be considered for appointment as Industrial Tribunals.

6. The learned counsel for the petitioner referred to the judgment of the Supreme Court in **State of Maharashtra v Labour Law Practitioners' Association and others** (supra) to contend for the position that Presiding Officers of Labour Court as also the Industrial Tribunal constitute judicial service which would come within the meaning of Article 234 of the Constitution and that the term District Judge as occurring in Article 236(a) of

the Constitution of India is not confined to the judges of the principal civil court in the hierarchy of general civil courts. The term will also include the hierarchy of specialised civil courts, such as hierarchy of Labour Courts and Industrial Courts. The contention was that there is an expansive definition of District Judges under Article 236 of the Constitution of India and the term therefore encompasses the Presiding Officers of Lower Courts and Industrial Tribunals as well.

7. I have heard the learned Senior counsel for the petitioner, Mr.Dandapani, the learned Senior counsel Mr.KRB Kaimal appearing for respondent No.6, Mr.P.R.Ramachandra Menon, learned counsel for the 5th respondent and Mr.Basant Balaji Government Pleader appearing for respondents 1 and 2.

8. Appointment of Presiding Officers of Labour Court and Industrial Tribunals are separately dealt with under Sections 7 and 7A of the Industrial Disputes Act respectively. The said two sections as contained in the Central Act are extracted hereunder for reference.

Section - 7:

1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified int he Second Schedule and for performing such other functions as may be assigned to them under this Act.

2) A Labour Court shall consist of one person only to be appointed by the appropriate Government.

3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless-

a) he is, or has been, a Judge of a a High Court; or
b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge, or
c) delete.
d) he has held any judicial office in India for not less than seven years; or
e) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years.

Section 7A:

1**) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified int he Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.**

2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.
3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless-
a) he is, or has been, a Judge of a High Court; or
aa) he, has, for a period of not less than three years, been a district Judge or an Additional District Judge;
5)deleted.
4) The appropriate Government may, if it so thinks fit, appoint two persons as assessors to advise the Tribunal in the proceeding before it.

9. A perusal of Section 7 would show that a person shall not be qualified for appointment as the Presiding Officer of a Labour Court, unless he is, or has been, a Judge of a High Court, or he has, for a period of not less than three years, been a District Judge or an Additional District Judge, or he has held any Judicial Office in India for not less than 7 years, or he has been the Presiding Officer of a Labour Court constituted under any Provincial Act or State Act for not less than 5 years.

10. Thus in the case of the Presiding Officers of Labour Courts, the legislature in its wisdom deemed it appropriate to confine the consideration to persons who have judicial service in their background . It could be a judge of a High Court, it could be a District Judge, it can even be any other person who has held any other judicial service. It is only the tenure in relation to each post which varies. But the common thread which runs through the sub clauses of Sub Section 3 of Section 7 is that the person being considered for appointment to the post of a Presiding Officer to a Labour Court should necessarily have held office in judicial service for the minimum requisite period mentioned in the aforesaid Section.

11. But a distinction could be found in the case of the Industrial Tribunals, the qualification of which is provided under Sub Section 3 of Section 7A of the Industrial Disputes Act. The amendment brought in the State of Kerala in relation to Section 7A of the Act reads as follows:

State of Kerala

In Section 7, in sub section (3) for clause (a) substitute the following clause, namely:
"a) he is, or has been, a judicial officer not below the rank of a District Judge, or is qualified for appointment as a Judge of a High Court; or ".
(vide Kerala Act 28 of 1961)

12. Those persons who have been judicial officers not below the rank of a District Judge are eligible to be considered for appointment to the post of an Industrial Tribunal. But apart from the above, persons who are qualified

for appointment as a Judge of a High Court, which qualifications are enumerated in Article 217(2), are also eligible to be considered for appointment as Industrial Tribunal. This, therefore, means that the State legislature exercising its powers under the concurrent list made a conscious distinction while prescribing the qualification for appointment to the post of the Presiding Officer of an Industrial Tribunal. The zone of consideration is not confined to persons who have discharged service as a judicial officer, it encompasses persons who have been practising law as an advocate for the requisite period as mentioned in Article 217 of the Constitution of India.

13. If this be so, can there be a declaration that the post of presiding officers of Labour Courts and Industrial Disputes Act are identical on the premise that they involve same types of duties and responsibilities. In my opinion it cannot be so done. Section 7 and 7A of the Act provide for the method of appointment and the qualifications requisite for the two posts separately. It was always open to the legislature, in its wisdom, to treat the two posts as synonymous and therefore prescribe the same eligibility for the two posts. The legislature did not do so, but consciously made a distinction. In so far as the State of Kerala is concerned, the qualifications are different in the context of widening the zone of consideration for appointment to the post of Presiding Officers of Industrial Tribunals. A declaration of identity in the manner sought for in the writ petition is, therefore, not possible.

14. An overlapping of the nature of duties and responsibilities of the

two posts need not, ipso facto, result in a declaration that the posts are identical. Further, assuming that the posts are identical in the context of the same type of duties and responsibilities, it really does not improve the case of the petitioner's Association. The members of the judicial service could be considered for appointment to the post of Presiding Officer of an Industrial Tribunal, if they come within the purview of Section 7A of the Industrial Disputes Act as in force in the State of Kerala. Obviously many of the members of the petitioner association would be so eligible. But that by itself does not necessitate the declaration of identity of the two posts which as stated to be, are treated separately by a Central statute and has been so treated for the past many decades.

15. In the case of Labour Law Practitioner's Association, supra, the Supreme Court was considering an amendment brought to the Bombay Industrial Relations Act providing for inclusion of persons who holds a degree in law of a University or persons who were holding an office not below the rank of Deputy Registrar of any Court or Tribunal for not less than 5 years also as eligible to be appointed as Presiding Officer of a Labour Court. The amendment of the sub section came to be challenged before the High Court of Bombay. The contention taken was that only the person who can otherwise be comprehended by the term `judicial officers' are eligible to be appointed as Presiding Officers of Labour Courts.

16. The aforementioned contentions were accepted by Bombay High

Court and Supreme Court affirmed the same inter alia holding that the constitutional scheme under Chapter V of Part VI dealing with the High Courts and Chapter VI of Part VI dealing with the subordinate courts show a clear anxiety on the framers of the Constitution to preserve and promote independence of the judiciary from the executive. The Supreme Court held that the persons presiding over Industrial and Labour Courts would constitute a judicial service and therefore the recruitment of Labour Court Judges is liable to be made in accordance with the Article 234 of the Constitution.

17. It is true that the Supreme Court groups Industrial Tribunals and Labour Courts together for the purpose of considering the validity of the amendment brought to the Bombay Industrial Relations Act, that the declaration was granted by the Supreme Court in relation to the post of Labour Courts as such. The crucial distinguishing feature in the present case stems out of the fact that the state legislature brought an amendment to Section 7A of the Industrial Disputes Act, broadening the zone of consideration for appointment to the post of Industrial Tribunals. Obviously, the validity of any appointment to the post of Industrial Tribunal within the State will have to be judged with reference to the statute as applicable in the State. When so judged, it is clear, the persons who have practiced as Advocates for the requisite period are also eligible to be considered for appointment to the post of Industrial Tribunal. They need not necessarily be persons who have judicial service in the background. Once this principle is

accepted, obviously, the eligible person is entitled to be appointed as Industrial Tribunal. The statute enables the Government to do so.

18. The further question to be considered is whether the State should be directed to treat 5 posts of Presiding Officers of Industrial Tribunal as promotion posts for being filled up by duly qualified member of judicial service. Article 233 deals with the appointment of District Judges and Article 234 deals with the recruitment of persons other than the District Judges to the judicial service. Rules have been framed under Article 233 of the Constitution prescribing the qualifications and method of appointment to the post of District Judges in the State. Appointment of a District Judge is done by the Governor and the rules framed in this behalf, which incidentally is the Higher Judicial Service Rules 1961 in force in the State provides the statutory guidelines, for appointment of District Judges. Promotion to the post of District Judge is again provided for in the Higher Judicial Service Rules 1961. Some of the posts are to be filled up by direct recruitment and the remaining are to be filled up by promotion. The posts which constitute the feeder category for promotion to the post of District Judge are again mentioned in the Kerala State Higher Judicial Special Rules 1961. The writ petitioner especially seeks a direction to the State to treat the post of Presiding officer of an Industrial Tribunal as promotion posts for being filled up by duly qualified members of judicial service. This in fact, would tantamount to an amendment to the Judicial Service Rules, in as much as, that channels of

promotion to the post of District Judges and the other categories contemplated by the Special Rules of Higher Judicial Service do not comprehend the post of an Industrial Tribunal as available to be filled up by persons of the judicial service as such. Further more, Section 7A of the Industrial Disputes Act specifically provides the qualification for appointment to the post of Industrial Tribunal. No doubt, persons who are in judicial service are also comprehended within the zone of consideration provided in Section 7A(3)(a) of the Act. But that is different from providing the various posts in the judicial service of the State as mentioned in the Rules framed under Article 234 of the Constitution as a feeder category for the post of Industrial Tribunal. Appointment to the post of Industrial Tribunal, as provided in the plenary statute, is only to be made by direct recruitment. Promotion of judicial officers is not contemplated thereunder. Prayer No.3 would essentially mean tinkering with a plenary statute as also the Rules framed under Article 234 of the Constitution. Obviously this is impermissible.

19. For all these reasons, I find there is no merit in the writ petition. Accordingly, the same is dismissed. In the facts and circumstances of the case, there will no order as to costs.

V.GIRI,JUDGE

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V.GIRI,J.

O.P.NO.7199/2000

JUDGMENT

7/8/2007